

Council/Agency Meeting Held: _____		City Clerk's Signature _____
Deferred/Continued to: _____		
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied		
Council Meeting Date: 4/4/2005	Department ID Number: IS 05-006	

CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: HONORABLE MAYOR CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

PREPARED BY: BEHZAD ZAMANIAN, ACTING DIRECTOR OF INFORMATION SERVICES *82*

SUBJECT: APPROVE AMENDMENT TO PROFESSIONAL SERVICES
CONTRACT BETWEEN ATRILOGY SOLUTIONS GROUP, INC. AND
CITY OF HUNTINGTON BEACH

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Should the City Council amend the Professional Services Contract that was approved by City Council in October 2001 and amended in December 2002 between Atrilogy Solutions Group, Inc. and the City of Huntington Beach?

Funding Source: Funds for Information Systems Professional Services provided by this agreement are currently budgeted in the BEACH Project fund (30143002.86100). No additional funds are needed.

Recommended Action: MOTION TO: Approve and authorize the Mayor and City Clerk to execute Amendment No. 2 to *The Professional Services Contract Between the City Of Huntington Beach And Atrilogy Solutions Group, Inc. for Technical Support Personnel.*

Alternative Action(s): Do not approve the amendments to the contract.

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 CITY CLERK
 CITY OF
 HUNTINGTON BEACH, CA

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REQUEST FOR ACTION

MEETING DATE: 4/4/2005

DEPARTMENT ID NUMBER: IS 05-006

Analysis: The original Atrilogy Solutions Group, Inc. contract was approved October 2001 and amended in December 2002. Staff is proposing to amend the contract once again in order to modify the expiration date of the contract from September 30, 2004 to September 30, 2005 and to increase the "not to exceed" amount of the contract from \$1,500,000 to \$1,750,000.

The technical personnel provided through this contract provide support for the City's primary business software applications (Oracle's J. D. Edwards software). The City currently does not have the required in-house technical support for this software, and needs to maintain the system until such time as the vacant positions in the Information Services Department are recruited and hired.

Environmental Status: None

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Amendment No. 2 to the Professional Services Contract between the City of Huntington Beach and Atrilogy Solutions Group, Inc. for Technical Support Personnel.
6	2.	Amendment No. 1 to the Professional Services Contract between the City of Huntington Beach and Atrilogy Solutions Group, Inc. for Technical Support Personnel.
15	3.	Original executed Professional Services Contract Between The City of Huntington Beach and Atrilogy Solutions Group, Inc. for Technical Support Personnel.

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ATTACHMENT #1

**AMENDMENT NO. 2 TO PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND ATRILOGY SOLUTIONS GROUP, INC.
FOR TECHNICAL SUPPORT PERSONNEL**

THIS AMENDMENT is made and entered into by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "CITY", and ATRILOGY SOLUTIONS GROUP, INC., a Delaware corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY and CONSULTANT are parties to that certain agreement, dated October 1, 2001, entitled "Professional Services Agreement Between the City of Huntington Beach and Atrilogy Solutions Group, Inc. for Technical Support Personnel," as amended, which agreement shall hereinafter be referred to as the "Original Agreement," and

Since the execution of the Original Agreement, CITY has requested additional work from CONSULTANT and CONSULTANT has agreed to perform such work,

NOW, THEREFORE, the parties wish to amend the Original Agreement as follows:

1. REPLACEMENT OF SECTION 3 ENTITLED "TERM, TIME OF PERFORMANCE"

Section 3 of the Original Agreement entitled "TERM, TIME OF PERFORMANCE" is hereby deleted in its entirety and replaced with the following new Section 3 to read as follows:

3. TERM; TIME OF PERFORMANCE

Time is of the essence of the Agreement. The services of CONSULTANT are to commence as soon as practicable after the execution of this Amendment by CITY (the "Commencement Date"). This Amendment and Agreement shall expire on September 30, 2005, unless sooner terminated as provided herein. CONSULTANT'S services under each Addendum are to commence as soon as practicable once CITY'S Information Systems Director and CONSULTANT execute that Addendum. These times may be extended with the written permission of CITY.

2. REPLACEMENT OF SECTION 4 ENTITLED "COMPENSATION"

Section 4 of the Original Agreement entitled "COMPENSATION" is hereby deleted in its entirety and replaced with the following new Section 4 to read as follows:

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4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT according to an agreed upon hourly and overtime hourly rates set forth in each Addendum. The total amount of fees, costs and expenses paid to CONSULTANT under this Amendment, the Agreement and all Addendums shall not exceed One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00).

3. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by and through their authorized officers on _____, 2005.

ATRILOGY SOLUTIONS GROUP, INC.,
a Delaware corporation

By: _____

David P. Charrest

David P. Charrest

print name

ITS: (circle one) Chairman President Vice President

AND

By: _____

Doug Lins

Doug Lins

print name

ITS: (circle one) Secretary/Chief Financial Officer/
Asst. Secretary - Treasurer

CITY OF HUNTINGTON BEACH, a
California municipal corporation

Mayor

City Clerk

APPROVED AS TO FORM:

Jennifer McGrath

City Attorney

In 3/1/05

3/2/05 p.e.
02-02-05

INITIATED AND APPROVED:

B. D. Smith

Director of Information Systems

REVIEWED AND APPROVED:

City Administrator

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ATTACHMENT #2

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND ATRILOGY SOLUTIONS GROUP, INC.
FOR TECHNICAL SUPPORT PERSONNEL

THIS AMENDMENT (the "Amendment") is made and entered into the 16th day
of December, 2002, by and between the CITY OF HUNTINGTON BEACH, a
California municipal corporation, hereinafter referred to as "CITY", and ATRILOGY
SOLUTIONS GROUP, INC., a Delaware corporation, hereinafter referred to as
"CONSULTANT."

WHEREAS, CITY and CONSULTANT are parties to that certain agreement, dated
October 1, 2001, entitled "Professional Services Agreement Between the City of Huntington
Beach and Atrilogy Solutions Group, Inc. for Technical Support Personnel," which agreement
shall hereinafter be referred to as the "Original Agreement," and

Since the execution of the Original Agreement, CITY has requested additional work from
CONSULTANT and CONSULTANT has agreed to perform such work; and

NOW, THEREFORE, the parties wish to amend the Original Agreement as follows:

1. REPLACEMENT OF SECTIONS 1, 2, 3, 4, 6, 8, 19, 26, 27 and 28

Sections 1 (SCOPE OF SERVICES), 2 (DESIGNATED CONTACTS), 3 (TIME OF
PERFORMANCE), 4 (COMPENSATION), 6 (METHOD OF PAYMENT), 8 (HOLD
HARMLESS), 19 (NOTICES), 26 (ATTORNEY'S FEES), 27 (GOVERNING LAW AND
VENUE) and 28 (ENTIRETY) of the Original Agreement are deleted in their entirety and
replaced with the following Sections:

2. Section 1 (SCOPE OF SERVICES) is amended as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide technically skilled personnel to augment CITY staff in

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the operations and support of CITY and its related hardware, software and network operations. For each person provided by CONSULTANT, and in advance of any work done by such person under this Agreement, the CITY's Information Systems Director and CONSULTANT shall execute an Addendum setting forth the name of that person, the general services to be provided by that person, and the hourly and overtime hourly rates for that person. The Addendum shall state that it is being entered into pursuant to the terms of this Agreement. The Addendum must be executed by the CITY's Information Systems Director and CONSULTANT before that person undertakes any work pursuant to this Agreement. CONSULTANT shall not have the authority to act as an officer or director of CITY or to represent or obligate CITY in any manner.

CITY agrees to provide, at its own cost and expense, reasonable working space and materials, which may be necessary in connection with the performance by CONSULTANT of the services required pursuant to this Agreement.

In the event there are any conflicts or inconsistencies between the language in any Addendum and this Agreement, the language in the Agreement shall govern.

These services described in Section 1 and in any Addendum shall sometimes hereinafter be referred to as the "PROJECT."

3. Section 2 (DESIGNATED CONTACTS) is amended as follows:

2. DESIGNATED CONTACTS

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement. CONSULTANT hereby designates Dave Charest, who shall be its primary contact and agent in all consultations with CITY with regard to this Agreement.

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4. Section 3 (TIME OF PERFORMANCE) is amended as follows:

3. TERM: TIME OF PERFORMANCE

Time is of the essence of the Agreement. The services of CONSULTANT are to commence as soon as practicable after the execution of this Amendment by CITY (the "Commencement Date"). This Amendment and Agreement shall expire on September 30, 2004, unless sooner terminated as provided herein. CONSULTANT's services under each Addendum are to commence as soon as practicable once CITY's Information Systems Director and CONSULTANT execute that Addendum. These times may be extended with the written permission of CITY.

5. Section 4 (COMPENSATION) is amended as follows:

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT according to an agreed upon hourly and overtime hourly rates set forth in each Addendum. The total amount of fees, costs and expenses paid to CONSULTANT under this Amendment, the Agreement and all Addendums shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00).

6. Section 6 (METHOD OF PAYMENT) is amended as follows:

6. METHOD OF PAYMENT

A. Travel

1. Charges for time during travel are normally not reimbursable and will only be paid if such time is actually used in performing services for CITY or as otherwise arranged with CITY.

2. As CITY sometimes uses consultants that are outside of the nearest metropolitan area, CITY is very conscious of travel costs. Subject to agreement otherwise, CONSULTANT will be held to charging no fees on travel time to or from Huntington Beach.

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3. Automobile expenses are limited to the IRS standard business mileage rate. All other travel expenses must be approved in advance by CITY in writing. Requests for approval shall be submitted at least fourteen (14) days in advance, to allow for reduced transportation fares. Meals are not billable to CITY, without prior written consent of CITY.

B.

Billing

1. All billing shall be done monthly in one-tenth-hour (0.10) increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it. Minimum billing charges are unacceptable. CONSULTANT shall only charge for actual time spent. For example, minimum of 0.2 hours for phone calls or 0.4 hours for letters is unreasonable unless that is an accurate measure of time spent.
2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the case or matter.
3. CITY will not pay for telephone, cellular phone or postage charges.
4. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
5. CITY will not pay for word processing charges. This includes per page or hourly charges.
6. CITY will not pay for billing or discussion of bills. If CITY has questions about billing or needs additional information on bills, that is not a chargeable event; CONSULTANT should respond without charging CITY for the time required.
7. CITY appreciates when CONSULTANT has researched an issue previously and uses that research on the present case. CITY has retained CONSULTANT because of its past experience. CONSULTANT shall not charge CITY for work it has done and billed another client for in the past.
8. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
9. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
 - 1) Reference this Agreement and the applicable Addendum(s);

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- 2) Name CONSULTANT's employee(s) providing services under each Addendum and their applicable hourly and overtime hourly rates;
- 3) Describe the hours worked by each employee of CONSULTANT;
- 4) Show the total amount of the payment due; and
- 5) Include a certification by a principal member of CONSULTANT's company that the hours worked were in accordance with the provisions of this Agreement and the applicable Addendum(s).

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT's employee completed and City approved all such hours and was satisfied with that employee's work, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in the applicable Addendum may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

10. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

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7. Section 8 (HOLD HARMLESS) is amended as follows:

8. HOLD HARMLESS

CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees

except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

8. Section 19 (NOTICES) is amended as follows:

19. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 2 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

Attn: Information Systems Director
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Attn: Dave Charest
Atrilogy Solutions Group, Inc.
8001 Irvine Center Drive, Suite 400
Irvine, CA 92618

Notwithstanding the foregoing, CONSULTANT agrees that CITY has the ability to terminate any specific employee(s) of CONSULTANT working pursuant to an Addendum by giving CONSULTANT notice of termination of such employee(s) by e-mail or facsimile transmission, with a follow-up notice sent via one of the methods set forth in this Section. The effective date of such termination shall be the date such e-mail or facsimile transmission is sent.

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9. Section 26 (ATTORNEY'S FEES) is amended as follows:

26. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

10. Section 27 (GOVERNING LAW) is amended as follows:

27. GOVERNING LAW

This Agreement and any Addendum shall be governed and construed in accordance with the laws of the State of California.

11. Section 28 (ENTIRETY) is amended as follows:

28. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supercede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

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12. Section 29 (SURVIVAL) is added to the Original Agreement reads as follows:

29. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

13. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by and through their authorized offices the day, month and year first above written.

ATRILOGY SOLUTIONS GROUP, INC.,
a Delaware corporation,

By: David P. Charest
David P. Charest
print name

ITS: (circle one) Chairman/President/Vice President

By: AND Doug Lins
Doug Lins
print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer

REVIEWED AND APPROVED:

Ray J. Lins
City Administrator

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of California

Connie Boardman
Mayor

ATTEST:

Connie Brockway
City Clerk

APPROVED AS TO FORM:

Jennifer M. [Signature]
City Attorney
12/3/02

INITIATED AND APPROVED:

Michael P. [Signature]
Director of Information Services 12-11-02

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ATTACHMENT #3

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
ATRILOGY SOLUTIONS GROUP, INC. FOR TECHNICAL SUPPORT PERSONNEL

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
ATRILOGY SOLUTIONS GROUP, INC. FOR TECHNICAL SUPPORT PERSONNEL

This Agreement ("Agreement") is made and entered into this 1st day of
October, 2001, by and between the City of Huntington Beach, a municipal corporation of
the State of California, hereinafter referred to as "CITY," and Atrilogy Solutions Group, Inc., a
Delaware corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide technical support
personnel, and computer operations and network consulting services; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the
Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service
contracts have been complied with; and

CONSULTANT has been selected to perform said services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide technically skilled personnel to augment CITY staff in the
operations and support of the CITY's Information Systems Division and its related hardware, software
and network operations. For each person provided by CONSULTANT, and in advance of any work
done by such person under this Agreement, the CITY's Fire Chief/Information Systems Director and
CONSULTANT shall execute an Addendum setting forth the name of that person, the general services
to be provided by that person, and the hourly and overtime hourly rates for that person. The Addendum
shall state that it is being entered into pursuant to the terms of this Agreement. The Addendum must be
executed by the CITY's Fire Chief/Information Systems Director and CONSULTANT before that

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person undertakes any work pursuant to this Agreement. CONSULTANT shall not have the authority to act as an officer or director of CITY or to represent or obligate CITY in any manner.

CITY agrees to provide, at its own cost and expense, reasonable working space and materials which may be necessary in connection with the performance by CONSULTANT of the services required pursuant to this Agreement.

In the event there are any conflicts or inconsistencies between the language in any Addendum and this Agreement, the language in the Agreement shall govern.

These services described in Section 1 and in any Addendum shall sometimes hereinafter be referred to as the "PROJECT."

2. DESIGNATED CONTACTS

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement. CONSULTANT hereby designates Kristine Pilat, who shall be its primary contact and agent in all consultations with CITY with regard to this Agreement.

3. TIME OF PERFORMANCE

Time is of the essence of the Agreement. CONSULTANT's services under each Addendum are to commence as soon as practicable once CITY's Fire Chief/Information Systems Director and CONSULTANT execute that Addendum.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT according to an agreed upon hourly and overtime hourly rates set forth in each Addendum. The total amount of fees paid to CONSULTANT under this Agreement and all Addendums shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00).

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5. EXTRA WORK

In the event CITY requires additional services not included in Section 1, or changes in the scope of services described in Section 1, CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

A. CONSULTANT shall be entitled to biweekly or monthly payments for work actually done pursuant to this Agreement.

B. CONSULTANT shall submit to CITY an invoice for each payment due.
Such invoice shall:

- 1) Reference this Agreement and the applicable Addendum(s);
- 2) Name CONSULTANT's employee(s) providing services under each Addendum and their applicable hourly and overtime hourly rates;
- 3) Describe the hours worked by each employee of CONSULTANT;
- 4) Show the total amount of the payment due; and
- 5) Include a certification by a principal member of CONSULTANT's company that the hours worked were in accordance with the provisions of this Agreement and the applicable Addendum(s).

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT's employee completed and was approved for all hours submitted and satisfied with that employee's work, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-

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approval, and CONSULTANT's work may be suspended at the option of CITY until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement is terminated as provided herein.

C. Any billings for extra work or additional services authorized in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate and the work performed is acceptable. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that all materials prepared hereunder, including all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and shall be turned over to CITY upon termination of each CONSULTANT employee, or upon termination of this Agreement, whichever shall occur first. In the event this Agreement is terminated, said materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

CONSULTANT shall protect, defend, indemnify and save and hold harmless CITY, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expenses, costs (including without limitation, costs and fees of litigation of every nature) arising out of or in connection with CONSULTANT's performance of this Agreement or its failure to comply

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with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CITY shall be reimbursed by CONSULTANT for all costs and attorney's fees incurred by CITY in enforcing this obligation.

9. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

Pursuant to *California Labor Code* Section 1861, CONSULTANT acknowledges awareness of Section 3700 *et seq.* of said Code, which requires every employer to be insured against liability for workers' compensation; CONSULTANT covenants that it will comply with such provisions prior to commencing performance of the work hereunder; and shall indemnify, defend and hold harmless CITY from and against all claims, demands, payments, suit, actions, proceedings, and judgments of every nature and description, including attorney's fees and costs presented, brought or recovered against CITY, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by CONSULTANT under this Agreement.

CONSULTANT shall maintain workers' compensation and employers' liability in amounts not less than the State statutory limits.

CONSULTANT shall require all subcontractors to provide such workers' compensation and employers' liability insurance for all of the subcontractors' employees.

CONSULTANT shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation and employers' liability insurance and CONSULTANT shall similarly require all subcontractors to waive subrogation.

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10. GENERAL LIABILITY INSURANCE

In addition to the workers' compensation insurance and employers' liability and CONSULTANT's covenant to indemnify CITY, CONSULTANT shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage covering the PROJECT. The policy shall indemnify CONSULTANT, its officers, agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with the PROJECT, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000.00) for this PROJECT. The policy shall name CITY, its agents, its officers, employees and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the PROJECT shall be deemed excess coverage and that CONSULTANT's insurance shall be primary.

Under no circumstances shall the above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

11. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall furnish a professional liability insurance policy covering the work performed by it hereunder. Said policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. A claims-made policy shall be acceptable if the policy further provides that:

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- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of the reporting of any circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion, including the requirement of adding all additional insureds. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

12. CERTIFICATES OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; the certificates shall:

- A. provide the name and policy number of each carrier and policy;
- B. shall state that the policy is currently in force; and
- C. shall promise that such policies shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice.

CONSULTANT shall maintain the foregoing insurance coverages in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverages shall not derogate from the provisions for indemnification of CITY by CONSULTANT under the Agreement. CITY

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or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

13. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

14. TERMINATION

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder and/or any specific employee(s) of CONSULTANT working pursuant to an Addendum at any time with or without cause. Any termination of this Agreement or of any specific employee(s) of CONSULTANT working pursuant to an Addendum by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In addition, this Agreement shall automatically terminate without notice when the dollar cap in Section 4 is reached. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be delivered to it by CONSULTANT.

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15. ASSIGNMENT AND SUBCONTRACTING

This Agreement is a personal service contract and the work hereunder shall not be delegated or subcontracted by CONSULTANT to any other person or entity without the express prior written consent of CITY.

16. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

17. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the *California Government Code*.

18. NON-RECRUITMENT

CITY agrees not to employ, either directly or indirectly, as an employee or contractor or otherwise, or to solicit the employment or services of, any contracted employee assigned by CONSULTANT hereunder for a period of one (1) year after the completion of the last services provided by said contracted employee for CITY. Should CITY breach this provision of the Agreement, CITY and CONSULTANT acknowledge and agree that CONSULTANT would be damaged in an amount that is not reasonably determinable, and therefore, CITY agrees to pay to CONSULTANT as liquidated damages an amount equal to thirty percent (30%) of the annual salary of such contracted employee assigned hereunder by CONSULTANT who is hired by, or whose services are rendered to, CITY as part of said breach. CONSULTANT shall not be entitled to any liquidated damages if the contracted employee's contractual relationship or employment with

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CONSULTANT has been previously terminated either by CONSULTANT or by the contracted employee.

19. NOTICES

Any notice or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 2 hereinabove) or to CITY's Fire Chief/Information Systems Director or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

TO CITY:

Michael Dolder
Fire Chief/Information Systems Director
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Attn: Kristine Pilat
Atrilogy Solutions Group, Inc.
8001 Irvine Center Drive, Suite 400
Irvine, CA 92618

Notwithstanding the foregoing, CONSULTANT agrees that CITY has the ability to terminate any specific employee(s) of CONSULTANT working pursuant to an Addendum by giving CONSULTANT notice of termination of such employee(s) by e-mail or facsimile transmission, with a follow-up notice sent via one of the methods set forth in this Section. The effective date of such termination shall be the date such e-mail or facsimile transmission is sent.

Each party may change the address and person to be notified by giving the other party notice of such change via one of the methods set forth in this Section.

20. MODIFICATIONS

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

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21. SECTION HEADINGS

The titles, captions, section, paragraph, subject headings and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

22. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

23. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the

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date of its execution and delivery, be deemed an original. Each of the parties hereto shall retain an originally signed copy hereof. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

24. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the *United States Code* regarding employment verification.

25. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

26. ATTORNEY'S FEES

Except as set forth in Section 8 of this Agreement, in the event suit is brought by either party to enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees.

27. GOVERNING LAW AND VENUE

This Agreement and any Addendum shall be governed by the laws of the State of California and any and all actions initiated under or as a result of this Agreement or any Addendum shall be brought solely and exclusively in a court of competent jurisdiction in the County of Orange, State of California and no other court.

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28. ENTIRETY

The Agreement contains the entire agreement between the parties respecting the subject matter of this Agreement and supercedes all prior understanding and agreements whether oral or in writing between the parties respecting ~~the~~ ^{JMP} subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

ATRILOGY SOLUTIONS GROUP, INC.,
a Delaware corporation

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of California

By: David Charest
print name
ITS: Vice President

Samuel H. Huchton
Mayor

AND

ATTEST:

Connie Brockway
City Clerk (8-11-01)

By: Scott Spangler
print name
ITS: Secretary

APPROVED AS TO FORM:

Scott Huchton
City Attorney
8-5-01

INITIATED AND APPROVED:

Michael P. Wade 9-21-01
Fire Chief/Information Systems Director

REVIEWED AND APPROVED:

Peggy Fisher
City Administrator

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